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Section 7

REGULATION/INSTITUTIONAL CONSIDERATIONS

This section discusses existing water rights, the Bear River Compact, the jurisdiction of land areas within the basin, and several problems or concerns relating to water rights.

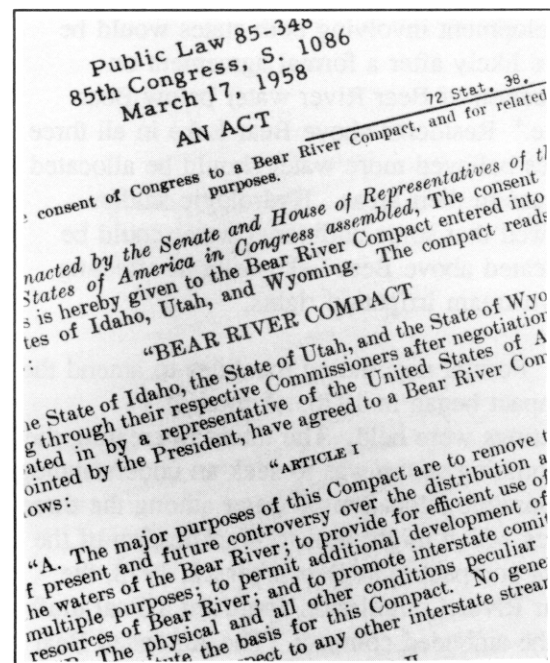
7.1 WATER RIGHTS

The State Engineer is presently adjudicating water rights in Box Elder County to define both surface and groundwater rights that are held for various uses under decrees, claims, and applications. A completion date is expected to be several years in the future. Proposed determinations are complete for Cache and Rich counties. Several applications to develop large additional amounts of water have been filed in the lower basin. Any water development on the Bear River or its tributaries must conform to established water rights as well as to the Amended Bear River Compact.

7.2 BEAR RIVER COMPACT

In order to develop storage reservoirs above Bear Lake and protect the water users below the lake without the threat of litigation, a compact for sharing of the Bear River was negotiated by the states of Idaho, Utah, and Wyoming, with final agreement on February 4, 1955. This compact was ratified by the legislatures of Idaho, Utah, and Wyoming. The United States Congress gave its legislative consent, and the president signed it on March 17, 1958.

To administer its provisions, the compact created the Bear River Commission, an interstate agency composed of 10 commissioners. Three commissioners represent each signatory state, and one additional commissioner, who serves as chairman without vote, represents the United States of America.



The commission has hired an engineer-manager to manage the basin states' interests in each yearly distribution of Bear River water. The division of water under the compact is among states (or separate sections thereof); and each state administers water apportioned to it in accordance with its own state law.

The 1958 compact provided for apportionment of direct flows on Bear River and its tributaries among separate sections of the states above Bear Lake, as well as establishing and limiting additional storage above Bear Lake. The 1958 compact also reserved a portion of the storage capacity in Bear Lake for primary use by (and protection of) irrigation uses and rights downstream from Bear Lake; and provided that water delivery between Idaho and Utah would be based on priority of rights without regard to state boundary lines.

The 1958 compact did not divide between Idaho and Utah either the direct flow or storable water below Bear Lake, and did not consider groundwater. State water officials in Utah and Idaho believed that a major water development involving both states would be more likely after a formal agreement on allocation of Bear River water below Bear Lake.⁴ Residents above Bear Lake in all three states believed more water should be allocated for use in their areas. Hydrologic studies showed that some additional water could be allocated above Bear Lake without affecting downstream irrigation rights.

Formal negotiating meetings to amend the compact began in 1970. A total of 17 meetings were held. The intent in creating the negotiating group was to seek an understanding of possible allocation of water among the three states which might lead to modification of the 1958 compact. On December 22, 1978, the Bear River Commission approved a final draft of the amended compact. The Amended Bear River Compact¹ was ratified by the legislatures of Idaho, Utah, and Wyoming during the 1979 legislative sessions. The U.S. Congress gave its legislative consent, and the President made it effective by adding his signature on February 6, 1980.

The Amended Bear River Compact provides for the protection of all prior rights applied to beneficial use as of January 1, 1976,

and the protection of all rights granted under the 1958 compact. The compact also includes groundwater development in the allocations, additional storage rights to all three states above Bear Lake, and allocation of the remaining water below Bear Lake between Idaho and Utah. Table 7-1 is a tabulation of the compact allocations.

7.3 WATER-USER AND WATER DEVELOPMENT ORGANIZATIONS IN BASIN

Several types of local water development and management entities are found in the basin, each intended for particular purposes and associated with distinctive enabling legislation.³

Mutual Irrigation Companies are the most common water development and management entities in the basin. They are formed under the Utah corporation code, and the majority of them are non-profit. In general, stockholders are granted the right to a quantity of water proportional to the number of shares they hold. Assessments are levied similarly.

Mutual Non-profit Water Companies are similar to mutual irrigation companies in that water users must be stockholders, and assessments are levied according to the number of shares. Most residents of the Bear River Basin are served by mutual non-profit water companies and city water departments.

Water Conservancy Districts are created under Title 73, Chapter 9 of the Utah Code. They are established by the district court in response to a formal petition, and are governed by a board of directors appointed by the governor for multi-county districts and by the county commission for single county districts. Water conservancy districts have very broad powers, including that of constructing and operating water systems, levying taxes, and contracting with the federal government. These districts may include incorporated and unincorporated areas.

TABLE 7-1
AMENDED BEAR RIVER COMPACT OF 1980¹
ALLOCATION OF WATER (acre-feet)

Upper and Central Divisions (above Stewart Dam)

	Idaho	Utah	Wyoming	Total
Storage--original	1,000	17,750	17,750	36,500
Storage--additional ^a	4,500	35,000	35,000	74,500
Depletion--additional (including groundwater)	2,000	13,000	13,000	28,000
<u>Bear Lake Spills</u>	<u>6%</u>	<u>47%</u>	<u>47%</u>	<u>100%</u>

Lower Division (based on depletion, including groundwater)

	Idaho	Utah	Total	Cumulative Total
First right	125,000		125,000	125,000
Second right		275,000	275,000	400,000
Third right	75,000	75,000	150,000	550,000
All remaining water	30%	70%	100%	

^aThis storage is not allowed when Bear Lake is below elevation 5,911.00.

City Water Departments are agencies established by municipalities to provide water service to residents. City ordinances and Titles 10 and 11 of the Utah Code provide the legal framework for operation.

Water Improvement Districts are established under Title 73, Chapter 7 of the Utah Code to accomplish goals of water development, financing, and management similar to those of water conservancy districts and metropolitan water districts. Their activities are confined to unincorporated areas within a single county.

Special Service Districts may be established by resolution to provide various services (including water) within a county or municipality. The powers of special service districts are similar to those of water

improvement districts. A service district may be governed by an administrative control board (which may be either appointed or elected), but the governing authority of the county or municipality retains final control and supervisory authority.

7.4 REGULATORY AGENCIES AND LAND JURISDICTION

State, federal, and local entities having major roles in the regulation and institutional aspects of water use throughout Utah are described in the State Water Plan. They are not repeated here. Also, the specific responsibilities of each are very similar in all river basins of the state. They include public drinking water requirements, water pollution control, distribution of water in accordance with legal water rights, restrictions on construction within or near stream channels,

required procedures to develop wells and pump groundwater, and many other activities which have application in the Bear River Basin. Uses and management of water are discussed in Sections 5, 6, 11, and 12 of this report.

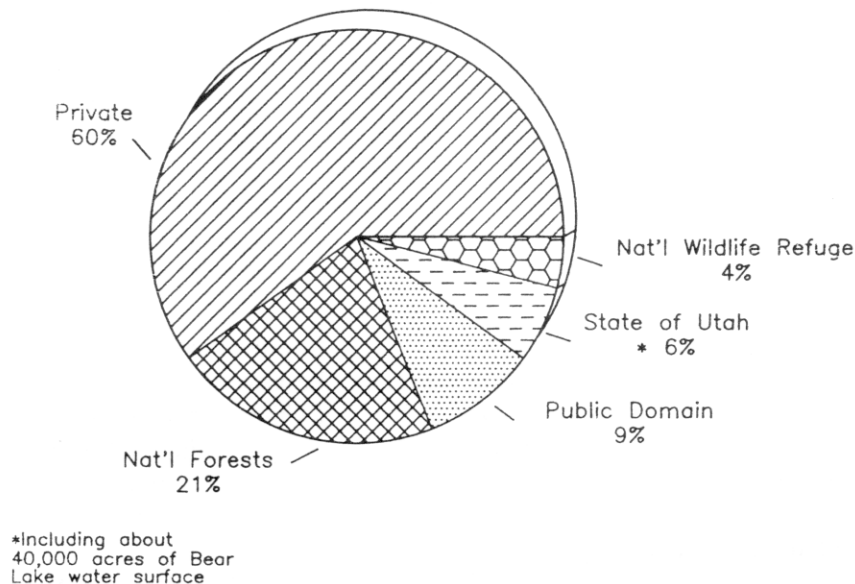
Privately owned land accounts for 60 percent of the Bear River Basin in Utah, a higher percentage than in most other basins

flow of the river, so that possible disputes about such determinations can be avoided.

The river commissioners distribute water according to the river's natural flow as measured at various points. These measurements determine how much water each user gets from the natural flow, and how much money each user must pay to compensate

FIGURE 7-1

LAND JURISDICTION BEAR RIVER BASIN IN UTAH ^{2]}



of the state. The remaining 40 percent includes national forest, public domain managed by the Bureau of Land Management, and state jurisdiction, as shown in Figure 7-1.

7.5 PROBLEMS AND NEEDS

On the Bear River below Bear Lake, a water right issue needing resolution involves the distribution of water to users. The parties to the Bear River Compact need to adopt a common method for determining the natural

UP&L for any lost power revenues due to depletions by junior right holders. UP&L has expressed its concern that these users are diverting and consuming water which the company is entitled to use for hydropower generation.

In 1989, UP&L executed 57 contracts in Utah and 19 in Idaho, which provide for delivery of Bear Lake storage water to

individual users. As a major water user on the river, UP&L has requested the State Engineers in Idaho and Utah to determine if there is any unauthorized use of Bear River water, and if so, to enforce the laws of the state.

7.6 RECOMMENDATIONS

The State Engineer offices in Utah and Idaho, in consultation with the Bear River Commission and with input from UP&L, should review alternatives for determining the natural flow of the Bear River below Bear Lake at strategic points, and adopt a common method in order to improve distribution of water to users.

7.7 REFERENCES

In addition to references listed below, Section 7 of the State Water Plan, January 1990, discusses the regulation of water in Utah in detail, including six policy issues concerning regulation and institutional problems.

1. Bear River Compact as Amended. Public Law 96-189, 96th Congress. Feb. 8, 1980.
2. "Hydrologic Inventory of the Bear River Study Unit," Utah State University for Utah Division of Water Resources, February 1973.
3. "State of Utah Water--1982," Utah Division of Water Resources, 1982.
4. "Proposed Revisions to the Bear River Compact," Utah Division of Water Resources, October 1976.